

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5158 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

=====

DOLATBEN NOSHIR MEDHORA

Versus

SHIVPRASAD SHIVSHANKAR

Appearance:

MR TS NANAVATI for Petitioners

MR DR DHIMAR for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 04/05/1999

ORAL JUDGEMENT

This petition is directed against the order dated

22nd May 1997 passed by the Secretary (Appeals) Revenue Department in Revision Application No.931 of 1996 under the Bombay Land Revenue Code, 1879.

2 The facts leading to the filing of this petition are as under:-

2.1 The lands which are subject matter of this petition admeasuring 13,961 and 6,523 sq. meters are situated in Survey No.78 of village Songadh in District Surat. Respondent no.1 was the owner of the said land and by registered sale deed dated 15th January 1979 the land was sold by respondent no.1 to the petitioners herein for a consideration of Rs.3,999. The mutation entry no.553 to that effect was made in the village revenue record on 3rd April 1979 and was certified on 7th May 1979. The Prant Officer and Taluka Development Officer Songadh granted N.A. permission in respect of the aforesaid land by his order dated 28th April 1983 at Annexure-A to the petition and the entry to that effect was also made in the revenue record in 1985. However, the petitioner-purchaser was advised that the land in question was a new tenure land and therefore premium was required to be paid to the Government before the transfer could be considered to be valid. Hence, the petitioner applied for fixing such premium and the Deputy Collector, Vyara, charged the premium of Rs.5,520 and also granted permission under section 43 of the Bomay Tenancy and Agricultural Lands Act, 1948, (for short the Tenancy Act) for converting the new tenure land into old tenure land and vide order dated 14th March 1985 (Annexure-B to the petition) entry no.832 to that effect was made and certified in the year 1989.

2.2 On 1.10.1993, the Collector, Surat, issued a show-cause notice to the petitioners-purchasers and also to respondent no.1 - vendor calling upon them to show cause as to why the sale in favour of the petitioners should not be held to be invalid. The petitioner gave a reply to the show-cause notice and contended that the proceedings were initiated after a lapse of 14 years which was much beyond the reasonable time. Moreover, as per the order dated 22.2.1985 premium of Rs.5,520 was also paid to the Government. The NA permission was obtained and the land was divided into plots and many of them were handed over to different occupants, hence the notice be filed. However, the Collector held that the land was originally allotted to the mother of repsondent no.1 and upon her death the land was inherited by respondent no.1. The land was a new and impartible

estate and could not have been sold without prior permission of the Collector. The purchaser has also not produced any document to show that he was the agriculturist and on that basis the Collector passed the order dated 4th June 1996 setting aside entry no.553 dated 3.4.1979 made in favour of the petitioners.

2.3 Aggrieved by the aforesaid order the petitioner-purchasers filed a revision application before the State Government. The revision application came to be dismissed by the impugned order dated 22nd May 1997. It is against the aforesaid order that the purchasers have filed the present petition.

3 In response to the notice issued by this Court, respondent no.1 has appeared through his counsel, Mr D.H.Dhimar, respondents nos.2 and 3 have appeared through Mr V.K.Pancholi, learned AGP.

4 At the hearing of this petition, the learned counsel for the petitioners submitted that on the basis of the registered sale deed, the order passed by the Deputy Collector levying premium and the order of the TDO granting NA permission, the petitioners have already converted 6523 sq. meters of land for non-agricultural use and the said land had already been plotted and many plots are already sold and therefore the petitioners have changed their position and the authorities could not have taken the action beyond reasonable time. In the facts of the instant case, the proceedings are initiated after about 14 years from the date of execution of the sale deed and after more than 8 years from the date of permission granted by the Deputy Collector levying premium for converting the new tenure land into old tenure land. In support of the said submission, the learned counsel for the petitioners relied upon various decisions including the decision of this Court in the case of PATEL MAGANBHAI K. V. B.P. VASAVA 1998(2) GLR 961.

In the alternative, Mr Nanavati, learned counsel for the petitioner submitted that even in the aforesaid case this Court has laid down that where a sale transaction is impugned on the ground of violation of any legal provision, the authorities are required to consider whether, even in absence of previous permission, any post facto permission can be granted or not. In the aforesaid decision this Court gave such a direction to the Collector to consider the question of grant of ex post facto permission to the sale transaction in question.

5 The learned counsel for respondent no.1 has

supported the arguments of the petitioners and has stated that in view of the fact that the land was not an irrigated land and cultivation of the land was not a profitable activity, respondent no.1 had sold the land to the petitioners in January 1979 at the price of about Rs.4,000.

6 Both the learned counsel for the petitioner as well as for respondent no.1 state that the petitioners and respondent no.1 are agreeable to an amicable settlement under which the petitioners are ready and willing to transfer 6 plots of land to respondent no.1 without charging any amount and the petitioner shall bear all the costs of executing the sale deeds, stamp duty and registration charges so that the respondent no.1 and each of his five sons gets a plot of land without refunding any part of the sale consideration for which the land was sold by respondent no.1 in 1979. Both the petitioners and respondent no.1 agree to submit an application to the Collector for granting ex post facto sanction under the provisions of Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 and under the provisions of any other law, if required. It is further submitted that respondent no.1 is a tribal but since provisions of Section 73AA were introduced in the Bombay Land Revenue Code in the year 1981, the transaction of sale in question will not be hit by the provisions of Section 73AA of the Code. In any case, respondent no.1 and the petitioners will apply for permission under section 73A of the Bombay Land Revenue Code to obviate any doubt or mistake about the transfer in question.

7 Mr Pancholi, learned AGP submitted that both the Collector and the Secretary (Appeals) have examined the matter in the light of the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, and the Bombay Land Revenue Code, 1879, and, therefore, the impugned orders do not call for any interference.

8 Having heard the learned counsel for the parties, it appears to the Court that initiation of the proceedings by the Collector in 1993 was prima facie beyond reasonable time. As per the settled legal position enunciated by the Hon'ble Supreme Court in the case of Raghav Natha v. State of Gujarat and other decisions of this Court, the revisional powers are required to be exercised within a reasonable time. Moreover, the record reveals that on 14.3.1985 the Deputy Collector, Vyara, had already passed an order under section 43 of the Tenancy Act for levying premium of Rs.5,520 from the petitioners as the land was found to be

of new tenure. While passing that order the Deputy Collector had also granted the permission for non agricultural use. It, therefore, appears that the violation of the requirement for obtaining the prior permission was a technical breach in the sense that the Deputy Collector did apply his mind to the transaction in question and passed an order u/s 43 of the Tenancy Act for levying the premium of Rs.5520. The Deputy Collector was, however, required to pass the necessary order under Section 43 of the Tenancy Act after considering whether prior permission was required for permitting respondent no.1 to sell the suit land to the petitioners herein. Since that was not done and since there is no prohibition against consideration of an application for ex post facto permission, as was envisaged by this Court in the aforesaid decision in the case of Patel Maganbhai (supra) and also in view of the fact that there is a mutual agreement for transfer of 6 plots from the petitoiners to respondent no.1, it appears that the interests of justice would be served if this petition is disposed of by recording the statement of the learned counsel for the petitioners and the learned counsel for respondent no.1 that the parties shall apply to the Collector, Surat, for granting ex post facto permission for the sale of the land in question effected by respondent no.1 in favour of the petitioners. The learned counsel for the parties state that the aforesaid application will be made by them without prejudice to the rights and contentions of the parties in the present petition.

9 In view of the aforesaid discussion, the impugned order dated 23.5.96 / 4.6.96 passed by respondent no.2 at Annexure-E and the order dated 22.5.97 passed by Secretary, Revenue, at Annexure-F are quashed and set aside and the matter is remanded to the Collector, Surat, to enable the Collector to consider the application which is to be made by the respondent no.1 within three months from today and the Collector shall, after giving the parties an opportunity of being heard, decide the same within six months from the date of the receipt of the application.

10 It will be open to the parties to raise all available contentions before the Collector and make all the necessary submissions including the case regarding the change of position by the petitioners after execution of the sale deed and after grant of permission by the TDO and the Deputy Collector and payment of premium pursuant to the order passed by the Deputy Collector in the year 1985. It is clarified that in case the order of the Collector is adverse to the parties, the parties shall be

at liberty to have further recourse in accordance with law.

11 Till the Collector dedcides the application and till the petitioners transfer 6 plots each in favour of respondent no.1 and his five sons, as stated above and as agreed to on behalf of the petitioners, the petitioners shall not transfer or part with possession of any other plots which are not transferred till today. In case the petitioners do not transfer six plots one each in favour of respondent no.1 and his five sons as agreed within one year from today, this petition shall stand dismissed.

12 RULE is made absolute accordingly in the aforesaid terms with no order as to costs.

(mohd)